

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 511 of 2008

- Smt.R.Parvati

---- Petitioner

Versus

- R.B.Subramanyam

---- Respondent

For the Applicant : Shri Aditya Tiwari on behalf of Shri Vinay Pandey,
Advocate for the applicant.

For the Respondent : Shri Parag Kotecha, Advocate for the respondent.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

12/08/2016

1. The instant criminal revision is not yet admitted for consideration and the matter is listed for final hearing.
2. By filing the instant petition the petitioner has prayed that the judgment passed by the Court below dated 1.7.2008 in Misc. Criminal Case No.479/2008 be set aside and order dated 7.1.2006 for grant of maintenance be restored and in alternate, order for grant of appropriate maintenance be passed.
3. Heard.
4. Learned counsel for the petitioner supported the grounds taken in the instant criminal revision and prayed that the instant criminal revision be allowed and relief as prayed in the petition be granted.

5. Learned counsel for the respondent would submit that the appreciation of the Court below for the fact that applicant accepted Rs.1,25,000/- towards one time maintenance is based on the admitted facts. The applicant executed the receipt Ex.D/1 by signing the same duly. Applicant is divorcée wife, his miscellaneous application to set aside the said order of divorce was also dismissed in absence of any other challenge to the same order before any higher forum. The order attains finality and also the application for divorce was prepared with the consent of the applicant. The Court below rightly rejected the said application, hence, the revision has no substance.
6. Brief facts of the case are that applicant is divorcee wife of the respondent. The respondent had filed an application under the relevant Section 13 of the Hindu Marriage Act, 1955, before the Judge, Family Court, Vishakhapatnam. The applicant remained *ex parte* the Court below. Vide order dated 09.06.2000 Family Court allowed the application and dissolved the marriage of the respondent with the applicant from the date of the order. Against the said order the applicant had preferred MJC No.123/2000, which is also dismissed vide order dated 06.11.2007. There is nothing on the record to demonstrate whether the applicant challenged the said order before any higher competent Court. Therefore, the order of divorce between the parties attains finality. A joint application on behalf of the respondent and applicant before the Family Court, under Section 13-B was filed for divorce by mutual consent. In the said application in Para-1 sub Para-V, it is submitted that both the parties mutually settled the point of maintenance out of the Court and no maintenance will be claimed against each other between the parties in future. The Court below

considered all the facts and also notice that a draft of Rs.1,25,000/- in total, was received by the applicant and she also gave receipt as required. The Court below held that applicant failed to prove her averment that the parties settled one time maintenance for Rs.6 lakh and that's why Rs.4,75,000/- is still outstanding. The Court below placed reliance on Ex.D/1 and Ex.P/8 and dismissed the application for maintenance filed by the applicant. Against the said order dated 01.07.2008 applicant had filed instant criminal revision.

7. A perusal of Ex.D/1 and Ex.P/8 and the other documents would show that application for divorce was filed on behalf of the parties with mutual consent. The applicant remained *ex parte* in the said proceeding. The Family Court vide order dated 09.06.2000 allowed the petition, dissolved the marriage and passed a decree of divorce from the date of the order, against the said order though *ex parte* an MJC No.123/2000 to set aside the said order was also dismissed thereafter the applicant had not preferred any petition to quash the decree of divorce before the competent higher Court. Hence, the said order for decree of divorce by mutual consent attains finality. On perusal of Ex.D/1 and Ex.P/8. It appears that in the said application for divorce by mutual consent the parties mutually settled the maintenance outside the Court though there is no any amount shown in the said petition. Even otherwise it is admitted that Rs.1,25,000/- was accepted and for which the applicant gave a receipt as required. He has failed to give any notice to the respondent that the amount settled mutually was for Rs.6 lakh and also during long pendency of Misc. Criminal Case No. 479/2008 for maintenance, it is nowhere pleaded by the applicant that the agreement for one time maintenance was for Rs.6 lakh, /

The Court below after taking cognizance of the entire facts and the conduct held that as she has already received one time maintenance of Rs.1,25,000/-, the application for maintenance is not maintainable.

8. On perusal of the entire facts emerged, the instant criminal revision being sans substance, is not worth admission. In the considered view of this Court, there is no any material in the instant criminal revision. It is liable to be dismissed and is hereby dismissed.

Sd/-

(Chandra Bhushan Bajpai)

Judge